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5           UNITED STATES DISTRICT COURT  
6           WESTERN DISTRICT OF WASHINGTON  
7           AT TACOMA

8           GEORGE W. KYNISTON,

9                         Plaintiff,

10           v.

11           MICHAEL J. ASTRUE, Commissioner of  
12           the Social Security Administration,

13                         Defendant.

14                         Case No. 11-cv-06072-RBL-JRC

15                         REPORT AND RECOMMENDATION  
16                         TO DENY APPLICATION TO  
17                         PROCEED *IN FORMA PAUPERIS*

18                         Noted for February 3, 2012

19                         This case has been referred to Magistrate Judge J. Richard Creatura pursuant to 28  
20 U.S.C. § 636(b)(1) and Local Rule MJR 3 and 4. This matter comes before the Court on  
21 plaintiff's filing of an application to proceed *in forma pauperis* and a complaint to review  
22 and set aside a decision of the Social Security Administration pursuant to 42 U.S.C. §  
23 405(g). Because plaintiff's application indicates that he has sufficient income with which  
24 to pay the \$350.00 filing fee, the undersigned recommends that the Court deny the  
25 application.

26                         DISCUSSION

27                         The district court may permit indigent litigants to proceed *in forma pauperis*  
28 following completion of a proper declaration and application to proceed *in forma*

*pauperis*. See 28 U.S.C. § 1915(a). However, the Court has broad discretion in denying an application to proceed *in forma pauperis*. See Weller v. Dickson, 314 F.2d 598, 600 (9th Cir. 1963), cert. denied, 375 U.S. 845 (1963).

5 By requesting the Court to proceed *in forma pauperis*, plaintiff is asking the  
6 government to incur the filing fee because he allegedly is unable to afford the costs  
7 necessary to proceed with his cause of action.

Plaintiff's declaration indicates that his spouse has a net monthly income of \$2,400.00 with monthly expenses of \$1,940 (see ECF No. 1, p. 1). While the undersigned recognizes that \$2,400.00 per month does not constitute a substantial income, it nevertheless places plaintiff's family income above the Department of Health and Human Services Poverty Guideline for a family of 3 persons (see <http://aspe.hhs.gov/poverty/11poverty.shtml>). Even with consideration of plaintiff's 19 year-old adult family member, plaintiff's family income clearly is above the poverty guideline. Therefore, it does not seem unreasonable to expect him to pay the required filing fee.

## CONCLUSION

Because it is reasonable for plaintiff to incur the costs to proceed with this cause  
of action, the undersigned recommends that the Court deny his application to proceed *in  
forma pauperis*. Accordingly, the undersigned also recommends that the Court order  
plaintiff to pay the required filing fee within thirty (30) days of the Court's order.

Pursuant to 28 U.S.C. § 636(b)(1) and Federal Rule of Civil Procedure (“Fed. R. Civ. P.”) 72(b), the parties shall have fourteen (14) days from service of this Report and Recommendation to file written objections thereto. See also Fed. R. Civ. P. 6. Failure to file objections will result in a waiver of those objections for purposes of *de novo* review by the district judge. See 28 U.S.C. § 636(b)(1)(C). Accommodating the time limit imposed by Fed. R. Civ. P. 72(b), the Clerk is directed set this matter for consideration on February 3, 2012, as noted in the caption.

DATED this 12th day of January, 2012.



J. Richard Creatura  
United States Magistrate Judge